IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 656 of 1990

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JP CHAVDA - Appellant(s)
Versus
DH MEHTA - Defendant(s)

==========

Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
MR RN SHAH for Defendant(s) : 1,

==========

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 17/10/2007

ORAL JUDGMENT

This Appeal preferred under Section 110D of the Motor Vehicles Act, 1939 (hereinafter referred to as, **“the Act”**) arises from the judgment and award dated

15th February, 1990 passed by the Motor Accident Claims Tribunal, Vadodara (hereinafter referred to as, **“the Tribunal”**) in Motor Accident Claim Petition No.117/1986.

The claimant - respondent no.1 herein was injured while he was riding a bicycle, was hit by the offending vehicle, a motor truck bearing registration no. GRY-3277. The claimant filed Motor Accident Claim Petition No.117/1986 for compensation in the sum of Rs.4 lakhs. Before the Tribunal, the tort-feasors: the driver and the owner of the offending truck and the insurance company defended the claim. By impugned award, the Tribunal awarded compensation in the sum of Rs.2,46,660=00. Feeling aggrieved, the tort-feasors: the driver and the owner of the offending truck and the insurance company jointly preferred the present Appeal under Section 110D of the Act.

It now transpires that the appeal on behalf of the driver and the owner of the offending truck was preferred without the authority in as much as no vakalatnama has been filed on their behalf. The

appellant no.3-Insurance Company, therefore, filed Civil Application No.996/1994 for permission to transpose the appellants nos.1 and 2 as party respondents. I am informed that the said application was allowed on 30th August, 1994. This Court (Coram: A.P.Ravani and J.M.Panchal, JJ. as they were then) permitted the transposition of the appellants nos.1 and 2 as party respondents and permitted the appellant-Insurance Company to allege collusion between the claimant and the tort-feasors so as to bring the appeal within the four corners of Section 110C(2A) of the Act.

Mr.Mehta has candidly submitted that unless the appeal is brought within the four corners of Section 110C(2A), the appeal by the Insurance Company is not maintainable. He has submitted that there is no material on record to establish collusion between the claimant and the tort-feasors.

It is apparent that the Insurance Company did not have any of the defenses enumerated in clauses (a) to (c) of sub-section (2) of Section 96 of the

Act. Having defended the tort-feasors before the Tribunal, it is not possible for the Insurance Company now to allege collusion between the tort-feasors and the claimant.

In this view of the matter, the present Appeal preferred by the insurer is not maintainable. The Appeal is accordingly dismissed.

(Ms. R.M.Doshit, J.)

/moin